

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ERIC S. BOWKER, : **CIVIL ACTION NO. 1:04-CV-2400**

:
Plaintiff : **(Judge Conner)**

:
v. :

UNITED STATES OF AMERICA, :

:
Defendant :

ORDER

AND NOW, this 10th day of August, 2005, upon consideration of defendants' motion to dismiss (Doc. 20), and it appearing that the motion (Doc. 20) and a supporting brief (Doc. 21) were served on defendant on or before July 22, 2005, see FED. R. Civ. P. 5(b)(2)(B), but that plaintiff has not filed a brief in opposition to the motion as of the date of this order, see L.R. 7.6 ("Any respondent who fails to [file a responsive brief . . . within fifteen (15) days after service of the movant's brief] shall be deemed not to oppose such motion."), it is hereby ORDERED that:

1. Plaintiff shall file a brief in opposition to the motion to dismiss (Doc. 20) on or before September 15, 2005.¹ Failure to comply with this order shall result in the granting of the motion (Doc. 21) and dismissal of the above-captioned case. See FED. R. Civ. P. 41(b).

¹ Documents filed by plaintiff in another case indicate that he has been temporarily transferred to another corrections facility and request an enlargement of time, until September 15, 2005, to respond to a pending motion. See Bowker v. Guyser, No. 1:05-CV-0146 (M.D. Pa. Aug. 8, 2005). That request was granted, see id., and the same deadline will be established in this case. However, the court reminds plaintiff of his continuing obligation to notify the court promptly of any change of address. (Doc. 2 at 4 ("If the court is unable to communicate with the plaintiff because the plaintiff has f[a]iled to notify the court of his or her address, the plaintiff will be deemed to have abandoned the lawsuit.")).

2. Defendant shall mail a copy of the brief in support of the motion to dismiss to plaintiff at his last known address on or before August 15, 2005.²

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

² A notice filed by defense counsel indicates that the brief in support of the motion to dismiss was mailed to plaintiff at his last known address on July 22, 2005, but was returned as undeliverable by corrections officials. (Doc. 22). That plaintiff did not receive the brief does not, of course, affect the validity of service. See FED. R. CIV. P. 5(b)(2)(B) ("Service by mail is complete on mailing."); 4B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1148 (3d ed. 1998) ("[N]onreceipt or nonacceptance of the papers by the person to be served generally does not affect the validity of the service of the papers . . ."). Nevertheless, the court will ask counsel to attempt delivery of the brief once more.